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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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LYK/BP

In The Matter Of the Application Of  
HAWAIIAN ELECTRIC COMPANY, INC.  
For Approval of Rate Increases and Revised  
Rate Schedules and Rules

DOCKET NO. 2006-0386

PUBLIC UTILITIES  
COMMISSION

2007 JAN 18 P 3:40

FILED

**MEMORANDUM IN OPPOSITION TO LIFE OF THE LAND'S**  
**MOTION TO INTERVENE**

**AND**

**CERTIFICATE OF SERVICE**

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**MEMORANDUM IN OPPOSITION TO LIFE OF THE LAND'S**  
**MOTION TO INTERVENE**

This Memorandum is respectfully submitted by HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") in opposition to Life of the Land's ("LOL") Motion to Intervene dated January 5, 2007<sup>1</sup> ("Motion").

HECO opposes LOL's Motion on the grounds that: (1) LOL has not shown that it has a statutory or constitutional right to intervene as a party in this proceeding; (2) any general interest that LOL may have regarding general rate case issues can be adequately represented by the Consumer Advocate; (3) LOL has not demonstrated that its intervention as a party would contribute to the development of a sound record regarding the reasonableness of HECO's proposed rate increase; (4) LOL's participation could unduly delay the proceedings and unreasonably broaden the issues presented in this docket, as the issues that LOL seeks to raise address policy concerns (e.g., the continued use of fossil fuels and the rate of shift to renewable energy) which are not pertinent to general rate case issues, and would be more appropriately

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<sup>1</sup> The Certificate of Service accompanying the Motion maintains that the Motion was hand delivered to HECO and its attorneys on January 5, 2007. HECO and its attorneys were served the Motion via U.S. Mail in an envelope with a January 8, 2007 post mark.

addressed in other proceedings; and (5) LOL has not shown that it should be granted full-party status in this proceeding, given its limited interest in the primary issues in a general rate increase proceeding (i.e., the revenue requirements issues).

As explained below, the Consumer Advocate will adequately represent LOL's interests in this proceeding. However, if LOL's involvement with respect to its interests is permitted in this docket, then LOL should be designated a participant, and not an intervenor, and the scope of its participation should be limited to the Energy Cost Adjustment Clause ("ECAC"). In addition, LOL's participation, if any, should be limited to responding to any discovery requests, filing a statement of position, and responding to questions at an evidentiary hearing. Further, LOL's participation should not be permitted to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Commission's Rules of Practice and Procedure.<sup>2</sup>

## **I. DISCUSSION**

### **A. LOL Has No Right – Statutory, Constitutional Or Otherwise – To Intervene In This Docket**

LOL claims that its "statutory right to participate" in this docket "is based on the Hawai'i State Constitution (Article XI, Section 9: Environmental Rights)" and is "supported by [LOL's] Petition and Charter of Incorporation (December 18, 1970)." LOL's Motion at 3. However, neither of these provisions grants LOL the status of a party to a Commission proceeding. Compare Hawaii Revised Statutes ("H.R.S.") § 269-51 (2003) (granting the Consumer Advocate the right to participate in Commission proceedings). Rather, the general rule with respect to intervention, as stated by the Hawaii Supreme Court, is that intervention as a party to a

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<sup>2</sup> Title 6, Chapter 61 of the Hawaii Administrative Rules ("H.A.R.") is referred to as the "Commission's Rules of Practice and Procedure."

proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.”<sup>3</sup> In re Application of Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. H.A.R. § 6-61-55(d) specifically states that: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules, as stated in H.A.R. § 6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a party. Based on the standards set forth above, LOL’s Motion should be denied.

**B. LOL’s Interests With Respect To HECO’s General Rate Case Issues Can Be Adequately Represented By The Consumer Advocate**

H.A.R. § 6-61-55(b)(5) requires LOL to establish “the extent to which the applicant’s interest will not be represented by the existing parties.” Similarly, H.A.R. § 6-61-55(b)(8) requires LOL to establish “the extent to which applicant’s interest in the proceeding differs from that of the general public.”

LOL contends that a rate increase will affect LOL and its members. LOL’s Motion at 4. LOL’s interest in general rate case issues (revenues, expenses, rate base, rate of return and cost

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<sup>3</sup> LOL recognizes “that the Commission has the discretion to determine whether [LOL is] permitted to intervene in this docket.” See LOL’s Motion at 3.

of service) is generally the same as that of the general public. Accordingly, LOL's interest in general rate case issues can be adequately represented by the Consumer Advocate, which is required under the Hawaii Revised Statutes to "represent, protect, and advance the interest of all consumers." H.R.S. § 269-51 (2003) (emphasis added).

Additionally, LOL's arguments attempting to show that the interests of LOL and the Consumer Advocate are different do not relate to general rate case issues. Instead, those subjects relate to broad policy-type issues such as "environmental, climatic and greenhouse gas impacts." LOL's Motion at 5. Moreover, beyond the general observation that "[c]onsumer and environmental issues are distinct, although they overlap[,]" LOL does not explain why its members – who "live, work, and recreate in Hawaii" – should be treated any differently from the general public with respect to utility revenues, expenses, rate base, and rate of return. See id.

In Order No. 23097 in Docket No. 2006-0431 ("Power Outage Investigation"), which denied LOL's motion to intervene, the Commission did not find LOL's interest in that proceeding to be distinct from the general public and found that LOL's interests would be adequately represented by the Consumer Advocate. The order stated at 9-10:

For instance, LOL contends that its members and supporters are "affected by [s]ystem [r]eliability and [p]ower [o]utages." However, system reliability and power outages affect the public in general and LOL's members and supporters are not uniquely affected.

LOL's assertion that the Consumer Advocate cannot represent its interest and that LOL's interests differ from that of the general public since the Consumer Advocate protects the consumers' interests while LOL represents environmental interests i[s] not convincing. LOL's specific contention that separate representation is warranted since consumer and environmental issues are distinct is not fully credible with regard to this matter. Unlike other commission proceedings in which LOL was granted intervention, this proceeding does not involve a specific project, program, or manner of generation that could directly impact the environment. Rather, this is an investigation of the conduct of the HECO Companies' related to the Power Outages. As noted above, system reliability and power outages (which are the basic issues of this proceeding) affect

the general public. Thus, the commission finds that LOL's interests in this docket can be adequately represented by the Consumer Advocate.

Similarly, the relief which HECO requests in this proceeding affects the public in general and LOL's members and supporters are not uniquely affected. Further, this proceeding does not involve a specific project, program, or manner of generation that could directly impact the environment. Thus, LOL's interests in this docket will be adequately represented by the Consumer Advocate.

**C. LOL Has Not Shown That Its Participation Would Assist In The Development Of A Sound Record Regarding The Reasonableness Of HECO's Proposed Rate Increase**

LOL alleges that its "participation will enable the Commission to view and consider all of the pertinent available information needed to make a sound decision." *Id.* However, LOL's Motion does not address how LOL's participation would assist in the development of a sound record regarding the reasonableness of HECO's proposed rate increase. For example, LOL has not provided evidence that it has experience in utility rate case proceedings with respect to the primary issues in a general rate case (i.e., the revenue requirements issues in particular).

In addition, LOL has not demonstrated how its participation would assist in the development of a sound record regarding time of use rates, inclining block rates or the ECAC. With respect to time of use rates and the ECAC, LOL has not provided evidence that it has experience in these subjects or even with rate design in general. With respect to inclining block rates, LOL has not provided evidence that it has any recent experience on this subject.<sup>4</sup>

**D. LOL's Participation Could Unduly Delay The Proceeding And Unreasonably Broaden The Issues Presented In This Docket**

LOL contends that its "participation will neither unduly broaden the issues nor delay this

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<sup>4</sup> LOL's only stated source of knowledge on these subjects stems from LOL's reference to a "1970s docket which we were a party to." *Id.* at 2.

proceeding.” Id. at 5. However, LOL has not identified any evidence that it would offer regarding the reasonableness of HECO’s proposed rate increase. As a result, it is difficult for the Commission to determine the merit of LOL’s claim that it will “bring clarity to the issues at hand.” Id.

LOL’s proposed intervention would unduly delay the proceeding and unreasonably broaden the issues presented in this docket because rather than addressing general rate case issues (i.e., revenues, expenses, rate base, rate of return and cost of service), LOL claims that it will address “alternate scenarios that focus on faster reduction in fossil fuel use and more significant reductions in greenhouse gas emissions.” Id. at 4.

These issues are not pertinent to general rate case issues. It is therefore more likely that LOL’s participation would sidetrack the focus of this proceeding away from general rate case issues. These issues would be more appropriately discussed in other proceedings (e.g., integrated resource planning proceedings).<sup>5</sup>

In addition, persons allowed by the Commission to intervene in ratemaking proceedings pursuant to H.A.R. § 6-61-55 generally are afforded full-party status with respect to all issues raised in the given docket. A strong showing should be required before a person is permitted to intervene as a full party. LOL has not justified its intervention as a full party in this proceeding.

**E. If the Commission Finds That LOL Should Be Involved In This Docket, Then LOL Should Be Allowed Limited Participation Without Intervention**

The Commission in the past has denied intervenor status, but granted participation status pursuant to H.A.R. § 6-61-56, and allowed the limited participation of persons seeking

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<sup>5</sup> In Order No. 23097, the Commission pointed out that “...LOL’s involvement in various commission proceedings, including Docket Nos. 03-0371 (Distributed Generation), 03-0417 (East Oahu Transmission Project), 05-0069 (Energy Efficiency), and 05-0145 (Campbell Industrial Park Generating Station), to name a few, indicates that there are sufficient other means for LOL to protect its interests...” at 10.

intervention on specific issues when such persons' interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

H.A.R. § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, the Commission addressed participation without intervention in Re Hawaii Electric Light Co., Docket No. 05-0315, Order No. 22663 (August 1, 2006) ("Order No. 22663"). In that rate case, the Rocky Mountain Institute ("RMI") filed a motion to intervene, which was denied because RMI's stated experience and expertise were not reasonably pertinent to HELCO's request for a general rate increase. The Commission nevertheless granted RMI "limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the renewable energy and energy efficiency program for affordable homes." Order No. 22663 at 8 (emphasis added). In addition, the Commission stated that "unless the commission decides otherwise at a future date, RMI's participation is limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing." Id. at 8-9.

In addition, in Re Hawaii Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) ("Order No. 17532"), the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company ("TGC") to intervene in Hawaii Electric Light Company's ("HELCO") rate case. However, the Commission granted TGC participant status, limited to

HELCO's proposed Standby Rider A.

The Commission stated:

the commission believes that TGC's limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;<sup>6</sup> provided that TGC's participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission's review, it is concluded that TGC's efforts duplicate those of the Consumer Advocate's, the commission will reconsider TGC's further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted). The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989);<sup>7</sup> and Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).<sup>8</sup>

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<sup>6</sup> In a footnote, the Commission added:

Unless ordered otherwise, TGC's participation will extend no further. We also make clear that as part of its on-going review of HELCO's request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC's participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

<sup>7</sup> In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participant status would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

<sup>8</sup> In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a Maui Electric Company, Limited ("MECO") rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's

LOL's Motion does not specifically request participant status. However, LOL states that "[i]f the Commission decided on a similar course [to the bifurcation of energy efficiency issues from the rate increase in Docket No. 04-0113<sup>9</sup>], then our Motion to Intervene should be considered only a Motion to Intervene on the [issues of ECAC, residential time of use rates, and residential inclining block rates.]" LOL's Motion at 2-3.

As noted above, LOL has not requested participant status. However, if the Commission finds that the Consumer Advocate would not adequately represent LOL's interest concerning the ECAC and therefore allows LOL to participate in this proceeding, then LOL's participation should be limited to that issue. See LOL's Motion at 2.

HECO's proposed residential time of use rates and residential inclining block rates should not result in the discussion of broad policy-type issues such as "environmental, climatic and greenhouse gas impacts" in this proceeding. The broad policy-type issues that LOL wants to pursue are not pertinent to HECO's request for Commission approval of the proposed residential time of use rates and inclining block rates so LOL should not be permitted to participate with respect to those subjects.

## **II. CONCLUSION**

Based on the foregoing, HECO respectfully requests that the Commission deny LOL's Motion to Intervene as a party. If LOL is allowed to participate in this docket, however, then LOL should be designated a participant, and not an intervenor party, and its participation should

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involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

<sup>9</sup> By Order No. 21698, dated March 16, 2005, the Commission bifurcated HECO's proposed rate increase (Docket No. 04-0113) from the statewide Energy Efficiency Docket (Docket No. 05-0069).

be limited to the ECAC. In addition, LOL's participation should be limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing. Further, LOL's participation should not be permitted to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Commission Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, January 18, 2007.

A handwritten signature in black ink, appearing to read "Tom Williams", is written over a horizontal line.

THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
DAMON L. SCHMIDT

Attorneys for  
HAWAIIAN ELECTRIC COMPANY, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing **MEMORANDUM IN OPPOSITION TO LIFE OF THE LAND'S MOTION TO INTERVENE**, together with this Certificate of Service, by hand delivery and/or mailing a copy by United States mail, postage prepaid, to the following:

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
335 Merchant Street, Room 326  
Honolulu, HI 96813

HENRY Q CURTIS  
VICE PRESIDENT FOR CONSUMER ISSUES  
LIFE OF THE LAND  
76 North King Street, Suite 203  
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DATED: Honolulu, Hawaii, January 18, 2007.



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